

1 JERRY S. BUSBY  
2 Nevada Bar #001107  
3 ANDRE T. MARQUES  
4 Nevada Bar #014737  
5 COOPER LEVENSON, P.A.  
6 3016 West Charleston Boulevard - #195  
7 Las Vegas, Nevada 89102  
(702) 366-1125  
FAX: (702) 366-1857  
[jbusby@cooperlevenson.com](mailto:jbusby@cooperlevenson.com)  
[amarques@cooperlevenson.com](mailto:amarques@cooperlevenson.com)  
8 Attorneys for Defendant  
9 SMITH'S FOOD & DRUG CENTERS, INC.

10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 KATHY VERNE, an individual

13 Case No. 2:20-cv-01633-JCM-EJY

14 Plaintiff,

15 vs.

16 SMITH'S FOOD & DRUG CENTERS, INC.,  
17 a foreign corporation; DOES I-X, inclusive;  
18 and ROE CORPORATIONS I-X, inclusive.

19 **JOINT PRETRIAL ORDER**

20 Defendants.

21 The parties, by and through their undersigned counsel, hereby submit this Joint Pretrial Order  
22 pursuant to Local Rule 16-3. After pretrial proceedings in this cause,

23 **IT IS SO ORDERED:**

24 **I.**

25 **STATEMENT OF THE FACTS/CONTENTIONS OF THE PARTIES**

26 This is a premises liability case arising out of an alleged slip and fall that occurred at a local  
27 SMITH'S grocery store on March 14, 2019. Specifically, Plaintiff Kathy Verne, alleges she slipped and  
28 fell on a foreign object negligently left on the ground. As a result of the incident, Plaintiff alleges that  
she suffered injuries to her left hip, thigh, and lower back.

29 **Plaintiff's Contentions:**

30 Plaintiff contends SMITH'S was aware, or should have been aware, that the area where the  
31 incident occurred contained a dangerous condition. Moreover, Plaintiff further contends that SMITH'S

1 should have known the area was unsafe and undertaken to warn Plaintiff. Finally, Plaintiff contends that  
2 SMITH'S negligence proximately caused injuries to Plaintiff's back and hip.

3 **Defendant's Contentions:**

4 Defendant denies Plaintiff's allegation and contends that it exercised reasonable care and that  
5 Plaintiff has failed to establish a *prima facie* case of negligence.

6 Defendant denies Plaintiff's allegations of negligence and contends that Plaintiff was also  
7 negligent by failing to take actions to prevent the accident from occurring.

8 Defendant further contends that the injuries claimed by Plaintiff were not proximately caused by  
9 the incident at SMITH'S.

10 Defendant also contends that Plaintiff's alleged future damages should be excluded from  
11 consideration by the jury. In the alternative, Defendant contends that Plaintiff's evidence of future  
12 damages fails to meet the requisite burden of proof.

13 **II.**

14 **STATEMENT OF JURISDICTION**

15 Plaintiff resided in Las Vegas, Nevada at the time of the accident; and still resides in Las Vegas,  
16 Nevada today. Defendant Smith's Food and Drug Centers, Inc. is a foreign corporation, licensed to do  
17 business in the County of Clark, State of Nevada. This matter involves a claim for damages in excess of  
18 \$75,000. Jurisdiction is therefore based upon diversity of citizenship under 28 U.S.C. § 1332. The  
19 parties admit that jurisdiction is proper and admit that venue is proper pursuant to 28 U.S.C. § 1391.

20 **III.**

21 **LIST OF CLAIMS FOR RELIEF**

22 Plaintiff's Complaint contains causes of action for negligence and premises liability. As a  
23 result, Plaintiff is claiming past and future medical expenses.

24 **IV.**

25 **LIST OF AFFIRMATIVE DEFENSES LISTED IN DEFENDANT'S ANSWER**

26 In addition to affirmatively denying Plaintiff's allegations, SMITH'S has also affirmatively  
27 pled the following defenses:

28 1. Failure to mitigate damages; and

## 1 2. Comparative negligence.

V.

**THE FOLLOWING FACTS ARE ADMITTED BY THE PARTIES AND  
REQUIRE NO PROOF**

1. Venue is proper in the United States District Court for the District of Nevada in Las Vegas, Nevada.
2. This lawsuit arises out of a slip and fall that an accident that occurred on March 14, 2019, at the SMITH'S store in Las Vegas, Nevada.

VI

**THE FOLLOWING FACTS, ALTHOUGH NOT ADMITTED, WILL NOT BE  
CONTESTED AT TRIAL BY EVIDENCE TO THE CONTRARY**

1. Defendant owned and operated the SMITH'S grocery store located at 5540 Camino Al Norte, North Las Vegas, Nevada.
2. SMITH'S is a resident, for purposes of diversity jurisdiction, of the States of Ohio and Utah.
3. Plaintiff is a citizen and resident of Las Vegas, Nevada.

VII.

**THE FOLLOWING ARE THE PARTIES' STATEMENT OF OTHER ISSUES OF FACT  
TO BE DETERMINED UPON TRIAL.**

### A. Plaintiff:

1. Liability?
2. Causation of injuries?
3. Reasonableness and necessity of medical treatment?
4. Usual and customary cost of treatment?
5. Damages?

**B. Defendant:**

1. What caused Plaintiff to fall at the SMITH'S store?
2. Whether Plaintiff was negligent?
3. Whether SMITH'S was negligent?
4. Whether Plaintiff can prove that SMITH'S negligently failed to provide a safe

1 environment?

2 5. Whether Plaintiff can prove that SMITH'S negligently failed to warn Plaintiff of a known  
3 hazard?

4 6. Whether Plaintiff can prove that SMITH'S had notice of the alleged hazardous condition  
5 prior to the accident?

6 7. Whether Plaintiff has any supporting or corroborating evidence regarding her claims for  
7 future damages?

8 8. Whether Plaintiff can sustain her burden of proving damages?

9 9. Whether Plaintiff can prove that the SMITH'S accident proximately caused Plaintiff to  
10 incur the medical expenses she is claiming in this litigation?

11 10. Whether Plaintiff's alleged medical expenses were reasonable and necessary?

12 11. Whether evidence of Plaintiff's preexisting conditions bars or limits her ability to seek  
13 damages herein?

14 12. Whether Plaintiff's failure to apportion medical treatment between her preexisting  
15 medical conditions and those caused by the accident bars or limits her ability to seek  
16 damages herein?

17 13. Whether the subject accident caused any of the injuries alleged by Plaintiff?

18 **VIII.**

19 **THE FOLLOWING ARE THE CONTESTED ISSUES OF LAW TO BE**  
20 **DETERMINED UPON TRIAL**

21 **A. Plaintiff:**

22 1. The issues of law raised by the parties' anticipated motions in limine;  
23 2. Duty;  
24 3. Breach;  
4. Causation;  
5. Damages.

25 **B. Defendant:**

26 1. The issues of law raised by the parties' anticipated motions *in limine*;  
27 2. Whether Defendant was negligent?  
3. Whether Plaintiff can sustain her burden of proof that she incurred damages?

- 1 4. Whether Plaintiff can prove that the SMITH'S accident proximately caused Plaintiff's
- 2 claimed injuries?
- 3 5. Whether Plaintiff can prove the necessary elements for her causes of action?

## IX.

### **EXHIBITS**

5 The following exhibits, although not agreed to as admissible in evidence of this case are subject  
6 to be used by the parties:

7 (A) **Plaintiff's Exhibits:**

- 8 1. Plaintiff's Complaint for Personal Injury and Negligence (P000001 – P000007);
- 9 2. Five photographs of Plaintiff's bodily injuries (P000008 – P000013);
- 10 3. Medical records and billing from Dignity Health Emerus – Craig Ranch (P000014 – P000156);
- 11 4. Billing from EMBCC Patient Services (P000157 – P000161);
- 12 5. Billing from Nightrays (P000162 – P000163);
- 13 6. Medical records and billing from Desert Orthopedic Center (P0000164 – P000187);
- 14 7. Medical records and billing from Las Vegas Radiology (P000188 – P000197);
- 15 8. Medical records and billing from Spinal Rehabilitation Center (P000198 – P000252);
- 16 9. Medical records and billing from Lyons Physical Therapy (P000253 – P000285);
- 17 10. Medical records and billing from Interventional Pain and Spine Institute (P000286 – P000308);
- 18 11. Medical records and billing from Las Vegas Neurosurgical Institute (P000309 – P000319);
- 19 12. Medical records and billing from Surgical Arts Center (P000320 – P000323);
- 20 13. Future cost estimate from Interventional Pain and Spine Institute (P000324 – P000325);
- 21 14. Video of the subject incident.

22 All documents provided by the defense.

23 (B) **Defendant's exhibits:**

- 24 1. Incident Report (DEF-0000001 – DEF-0000003);
- 25 2. Customer Statement (DEF-0000004 – DEF-0000005);

- 1 3. Letter from Sedgwick CMS to Kathy Verne dated March 21, 2019 (DEF-0000006);
- 2 4. Letter from Nathan S. Deaver, Esq. to CSC Services of Nevada, Inc. dated  
3 April 12, 2019 (DEF-0000007);
- 4 5. Letter from Sedgwick CMS to Kathy Verne dated April 15, 2019 (DEF-0000008);
- 5 6. Letter from Sedgwick CMS to Nathan Deaver, Esq. dated April 19, 2019  
6 (DEF-0000009);
- 7 7. Letter from Nathan S. Deaver, Esq. to Sedgwick CMS dated May 12, 2020  
8 (DEF-0000010 – DEF-0000013) (Exhibits will be produced upon request);
- 9 8. Letter from Nathan S. Deaver, Esq. to Sedgwick CMS dated June 8, 2020  
10 (DEF-0000014 – DEF-0000015); and
- 11 9. Sweeps Floor Inspection Report (DEF-0000016 – DEF-0000017).
- 12 10. One (1) compilation DVD from the day of the incident: 30192204287 –  
13 Kathy Verne – Date of Loss: 03/14/2019 – Store 345 – DXA Files (1 of 1)
- 14 11. Plaintiff's Responses to Requests for Admissions;
- 15 12. Plaintiff's Responses to Requests for Production;
- 16 13. Plaintiff's Answers to Interrogatories;
- 17 14. Enhanced copy of the SMITH'S video;
- 18 15. Still prints from the SMITH'S video;
- 19 16. Blowups and/or overlayed copies of SMITH's video and/or prints.

Defendant reserves the right to utilize any or all of the medical records produced by either party in this case during this litigation. Defendant further reserves the right to utilize any documents produced or identified by Plaintiff during this litigation. Finally, Defendant reserves the right to offer documents necessary to impeach evidence provided by Plaintiffs at trial.

**The following documents may be marked as exhibits, but shall not be admissible in evidence at this time:**

None at this time.

**As to the following exhibits, the party against whom the same will be offered objects to their admission upon the grounds stated:**

The parties reserve the right to object to exhibits. The parties have agreed to reserve any such objections until the time of trial.

1                   (A)    Objections as to Plaintiff's exhibits:2                   Counsel have discussed objections and each side has stipulated to authenticity of the medical records  
3 disclosed by either party during this litigation.

4                   Defendant further sets forth below its objections to Plaintiff's exhibits.

5                   **Plaintiff's Exhibit #1:** Relevance, hearsay. (Notwithstanding these objections, Defendant  
6 reserves the right to publish and/or read the Complaint for impeachment or rebuttal purposes.7                   **Plaintiff's Exhibit #5:** Relevance, lack of foundation, more prejudicial than probative.8                   **Plaintiff's Exhibit #3 – 12:** As previously stated, counsel for both parties have stipulated to the  
9 authenticity of the documents contained in these exhibits. This stipulation is conditioned on Plaintiff's  
10 attorney agreeing to not contest the authenticity of any medical records offered into evidence by  
11 Defendant at trial.12                   Notwithstanding the aforementioned stipulation, Defendant objects to any and all medical records  
13 offered by Plaintiff's attorney until and unless a foundation has been provided to establish, to a  
14 reasonable degree of medical probability, that the services rendered was reasonable, necessary and  
15 proximately caused by the accident involved in this litigation. Defendant also objects on the grounds of  
16 relevance, lack of foundation, and hearsay.17                   **Plaintiff's Exhibit #13:** Relevance, lack or foundation, hearsay, improper expert testimony not  
18 properly disclosed, and on the grounds that the information in the "cost estimate" can only be presented  
19 by live testimony at trial.20                   **Plaintiff's Exhibit #14:** No objection. Same as Defendant's exhibit #10.21                   (B)    Objections as to Defendant's exhibits:22                   Plaintiff objects to any and all exhibits offered by Defendant's attorney until and unless a foundation  
23 has been provided. Plaintiff specifically objects to the correspondence sent by her counsel to Defendant's  
24 carrier and/or third party administrator as being violative of the collateral source rule as well as the rule  
25 excluding discussions of compromise.26                   (C)    **Electronic evidence:** The parties anticipate utilizing the court's electronic evidence  
27 display system. The parties do not anticipate utilizing native electronic evidence but will be displaying  
28 video electronically. This includes the presentation of video electronically to the jury for deliberations.

1 The parties will coordinate with the courtroom administrator as contemplated by the Local Rules.

2 (D) **Depositions:**

3 **Plaintiff:** Plaintiff has not taken any depositions to use at trial.

4 **Defendant:** Defendant intends to offer live testimony of designated witnesses at trial. Defendant  
5 does not anticipate offering any depositions unless a witness becomes unavailable at the time of trial.  
6 Defendant reserves the right to use any deposition at trial for purposes of impeachment.

7 **X.**

8 **WITNESSES**

9 The following witnesses may be called upon by the parties at trial:

10 (A) **Plaintiff's Witnesses:**

11 1. Kathy Verne, Plaintiff  
12 c/o Brice J. Crafton, Esq.  
13 DEAVER | CRAFTON  
14 810 East Charleston Blvd.  
Las Vegas, NV 89104

15 2. Smith's Food & Drug Center, Inc., Person(s) Most Knowledgeable  
16 c/o COOPER LEVENSON, P.A.  
17 3016 West Charleston Blvd., #195  
Las Vegas, NV 89102

18 3. Smith's Food & Drug Center, Inc., Custodian of Records  
19 c/o COOPER LEVENSON, P.A.  
3016 West Charleston Blvd., #195  
20 Las Vegas, NV 89102  
The Custodian of Records for

21 4. Custodian of Records and/or  
22 Person(s) Most Knowledgeable  
23 Dignity Health Emerus – Craig Ranch  
1550 W. Craig Road  
24 North Las Vegas, NV 89032

25 5. Custodian of Records and/or  
26 Person(s) Most Knowledgeable  
27 St. Rose Dominical North Las Vegas  
1550 W. Craig Road  
North Las Vegas, NV 89032  
28 Tel. (702) 777-3615

1       6. Custodian of Records and/or  
2       Person(s) Most Knowledgeable  
3       EMBCC Patient Services  
4       Tel. (888) 703-3301  
5       pcc@embcc.com

6       7. Custodian of Records and/or  
7       Person(s) Most Knowledgeable  
8       Desert Orthopedic Center  
9       8205 W Arm Springs Road  
10      Las Vegas, NV 89113  
11      Tel. (702) 731-1616

12      8. Custodian of Records and/or  
13      Person(s) Most Knowledgeable  
14      Las Vegas Radiology  
15      7500 Smoke Ranch Road, Site 100  
16      Las Vegas, NV 89128  
17      T. (702) 254-5004

18      9. Custodian of Records and/or  
19      Person(s) Most Knowledgeable  
20      Spinal Rehabilitation Center – Buffalo Office  
21      911 N. Buffalo Drive, Suite 101  
22      Las Vegas, NV 89128  
23      T. (702) 629-3900

24      10. Dr. Marlene Duffy, M.D.  
25      c/o Spinal Rehabilitation Center – Buffalo Office  
26      911 N. Buffalo Drive, Suite 101  
27      Las Vegas, NV 89128  
28      T. (702) 629-3900

29      11. Custodian of Records and/or  
30      Person Most Knowledgeable  
31      Lyons Physical Therapy  
32      600 S. Tonopah Drive, Suite 230  
33      Las Vegas, NV 89106  
34      T. (702) 476-0222

35      12. Custodian of Records and/or  
36      Person Most Knowledgeable  
37      Interventional Pain and Spine Institute  
38      851 South Rampart Blvd., Suite 100  
39      Las Vegas, NV 89145-4826  
40      T. (702) 357-8004

41        ///

13. Dr. Jorg Rosler, M.D.  
c/o Interventional Pain and Spine Institute  
851 South Rampart Blvd., Suite 100  
Las Vegas, NV 89145-4826  
T. (702) 357-8004

14. Dr. Stuart Baird, M.D.  
c/o Interventional Pain and Spine Institute  
851 South Rampart Blvd., Suite 100  
Las Vegas, NV 89145-4826  
T. (702) 357-8004

15. Custodian of Records and/or  
Person Most Knowledgeable  
Las Vegas Neurosurgical Institute  
3012 S. Durango Drive  
Las Vegas, NV 89117-9186  
T. (702) 835-0088

16. Dr. Stuart S. Kaplan, M.D., FAANS  
c/o Las Vegas Neurosurgical Institute  
3012 S. Durango Drive  
Las Vegas, NV 89117-9186  
T. (702) 835-0088

17. Custodian of Records and/or  
Person Most Knowledgeable  
Surgical Arts Center  
9499 West Charleston Blvd., Ste. 250  
Las Vegas, NV 89117  
T. (702) 933-3600

19 Plaintiffs reserve the right to call rebuttal and/or impeachment witnesses

20 (B) **Defendant's witnesses:**

21 1. Kathy Verne, Plaintiff  
c/o Nathan S. Deaver, Esq.  
DEAVER & CRAFTON  
810 East Charleston Boulevard  
Las Vegas, NV 89104  
(702) 385-5969

22 2. Marco Dominguez  
c/o Smith's Store No. 345  
5564 Camino Al Norte  
North Las Vegas, NV 89031  
(702) 399-0730

28 / / /

3. Rosa Fairley  
c/o Fred Meyer Store No. 286  
101 Wellsian Way  
Richard, WA 99352  
(509) 943-8340

4. Keith Powell  
c/o Smith's Store No. 345  
5564 Camino Al Norte  
North Las Vegas, NV 89031  
(702) 399-0730

5. Store Director or other Knowledgeable Representative of SMITH'S  
c/o COOPER LEVISON, P.A.  
3016 West Charleston Boulevard - #195  
Las Vegas, NV 89102  
(702) 366-1125

Defendant reserves the right to call any medical provider identified by Plaintiff during this litigation. Said medical provider may be called to lay a foundation for their records or to testify regarding their care and treatment rendered to Plaintiff.

Defendant also reserves the right to call any witness identified by Plaintiff.

XII.

**TRIAL DATE**

Counsel have met and herewith submit three (3) agreed-upon trial dates:

1. December 5, 2022
2. January 23, 2023
3. February 27, 2023

1111

111

111

111

111

111

111

400

1 It is expressly understood by the undersigned that the court will set the trial of this matter on one of  
2 the agreed upon dates, if possible; if not, the trial will be set at the convenience of the Court's calendar.

3 **XIII.**

4 **TIME FOR TRIAL**

5 It is estimated that the trial herein will take a total of 3-5 days.

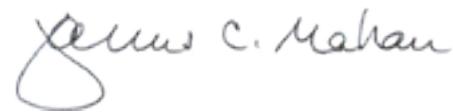
|   |   |
|---|---|
| DATED this 13th day of May, 2022.<br><br>Deaver & Crafton<br><br><u>/s/ Brice J. Crafton</u><br>Brice J. Crafton, Esq.<br>Nevada Bar No. 10558<br>810 East Charleston Boulevard<br>Las Vegas, Nevada 89104<br>Attorneys for Plaintiff | DATED this 13th day of May, 2022.<br><br>Cooper Levenson, P.A.<br><br><u>/s/ Jerry S. Busby</u><br>Jerry S. Busby, Esq.<br>Nevada Bar No. 1107<br>Andre T. Marques, Esq.<br>Nevada Bar No. 14737<br>3016 West Charleston Boulevard, Suite 195<br>Las Vegas, Nevada 89102<br>Attorneys for Defendant |
|---|---|

14 **XI.**

15 **ACTION BY THE COURT**

16 This case is set for court/jury trial on the fixed/stacked calendar on **December 5, 2022 at 9:00**  
17 **a.m.** in 6A. Calendar call will be held on **November 30, 2022, at 1:30 p.m.**

18 DATED: May 20, 2022



19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
UNITED STATES DISTRICT JUDGE